

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA : 08 Cr. 023 (GEL)

-v.- :
MICHAEL MALINOWSKI, :
a/k/a "stormwarnings2@aol.com," :
Defendant. :
: x

GOVERNMENT'S PROPOSED
EXAMINATION OF PROSPECTIVE JURORS

The Government respectfully requests that the Court include the following questions in its examination of prospective jurors pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure. The Court is requested to pursue more detailed questioning if a particular juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the juror in favor of or against either the Government or the defendant.

The Charge

1. This is a criminal case. The defendant, MICHAEL MALINOWSKI, has been charged with the commission of a federal crime in a one-count Indictment filed by a grand jury sitting in this District. The Indictment is not evidence. It simply contains the charge that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. I will

now summarize the charge in this case in order to determine whether there is anything about the nature of the case that may make it difficult or inappropriate for any of you to serve on the jury.

The Indictment charges the defendant with knowingly distributing child pornography by sending images of child pornography, via the Internet, from his computer in Arizona to a computer in Manhattan.

2. Does any juror have any personal knowledge of the charge in the Indictment as I have described it?

Nature of the Case

3. Does any juror have any views about, or personal experiences with, the type of conduct charged in the Indictment that would make it difficult for you to sit as a fair and impartial juror?

4. The testimony in this case may involve details concerning sexual activity, minors engaged in sexual activity, and depictions of minors engaged in sexual activity. Do any of you believe that you could not be fair and impartial because of the sexual content of such testimony or depictions?

5. The defendant is accused of violating a statute that makes it a crime for a person to distribute child pornography. Someone can be guilty of distributing child pornography if he knowingly sends an image of child pornography

from his computer to another computer, with the knowledge of the sexually explicit nature of the image he sent and that the image he sent was of an actual minor engaged in that sexually explicit conduct. Do any of you believe that you could not be fair and impartial because of the statute, as I have described it?

6. Does any juror feel that he or she could not view fairly and impartially a case involving such charges? Has any juror formed an opinion that the actions charged in the Indictment, as I have described them to you, should not be a crime?

7. Special Agents with the Department of Homeland Security, Immigration and Customs Enforcement, or ICE, a branch of the Federal Government, and officers with the New York City Police Department ("NYPD") participated in the underlying investigation. Have you or any members of your family, or any of your close friends, to the best of your knowledge, had any experience with the ICE or the NYPD, or any other federal, state or local law enforcement agency that would or could affect your ability to listen to the evidence and render an impartial verdict?

Knowledge of the Trial Participants

8. As I mentioned, the defendant in this case is MICHAEL MALINOWSKI. [Please ask the defendant to stand.] Do any of you know, or have any of you had any dealings, directly or

indirectly, with the defendant or any relative, friend, or associate of the defendant?

9. To your knowledge, do any of your relatives, friends, associates, or employers know the defendant?

10. MICHAEL MALINOWSKI is represented by David Storobin, at Storobin Law Firm PLLC, located at 14 Wall Street, 20 Floor, New York, New York 10005 and also in Brooklyn, New York. [Please ask Mr. Storobin to stand.] Do any of you know Mr. Storobin? Have any of you had dealings, either directly or indirectly, with him or anyone associated with his law practice?

11. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who is Michael J. Garcia. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Raymond Lohier and Carrie Cohen. They will be assisted by Special Agent Rosanna Licitra of ICE. [Please ask Mr. Lohier, Ms. Cohen, and Special Agent Licitra to stand.] In addition, they will be assisted by Noha Moussa of the U.S. Attorney's Office. Do any of you know Mr. Garcia, Mr. Lohier, Ms. Cohen, Special Agent Licitra, or Ms. Moussa? Have any of you had any dealings, either directly or indirectly, with any of these people?

Relevant Names and Locations

12. I will now read a list of names of people and

entities whose names may be mentioned during the trial, or who may be witnesses in this case.

Rosanna Licitra

Michael Smith

James Munjone

Thomas Connor

Christopher Trifiletti

National Center for Missing and Exploited Children

America On-Line

Cox Communications

Sprint Communications

Do any of you know any of these people or entities?

Have you had any dealings, either directly or indirectly, with any of these people or places?

Relevant Subject Matter

13. Do you have any opinion about the enforcement of the federal laws prohibiting adults from distributing or attempting to distribute child pornography?

14. Do you believe that the laws prohibiting commission of such crimes should not be enforced?

15. Do you believe that these laws should not be enforced if the adult used the internet within the private confines of his or her home or at work?

16. Do you know anyone who, as an adult, has engaged,

or attempted to engage, in distributing, obtaining, or receiving child pornography?

Relationship with the Government

17. Do any of you know, or have any association -- professional, business, or social, direct or indirect -- with any member of the staff of the U.S. Attorney's Office for the Southern District of New York, the Department of Homeland Security, Immigration and Customs Enforcement, or the NYPD? Is any member of your family employed by any law enforcement agency, whether federal, state, or local?

18. Do any of you have any bias, prejudice, or other feelings for or against the U.S. Attorney's Office, ICE, or the NYPD? Have any of you, either through any experience you have had or through anything you have seen or read, developed any bias or prejudice for or against the United States Attorney's Office, ICE, or the NYPD? Do any of you have any bias, prejudice, or other feelings against the United States Government or the United States Department of Justice or the New York City Police Department that would prevent you from being fair and impartial in this case?

19. Have you, or has any member of your family, either as an individual or in the course of business, ever been a party to any legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the

United States, including the Internal Revenue Service? Have any of you had any legal, financial, or other interest in any such legal action or dispute, or in its outcome? In particular, have you, or has any member of your family, ever had a dispute concerning payment of money owed to you by the Government?

20. Some of the witnesses who will appear in this case may be law enforcement agents. Does any juror believe that the testimony of agents is entitled to any greater or lesser respect than the testimony of any other witness?

Prior Jury Service

21. Have you ever, at any time, served as a member of a grand jury, whether in federal, state, county, or city court? If so, when and where did you serve?

22. Have you ever served as a juror in any court? If so, when, and in what court did you serve? Was it a civil or a criminal case? What was the nature of the case? Did the jury reach a verdict?

23. Did the jury reach a verdict?

Experience as a Witness, Defendant, or Crime Victim

24. Have any of you, or have any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a congressional or state legislative committee, licensing authority, or governmental agency? Have you, or have any of

those close to you, ever been questioned in any matter by a federal, state, or local law enforcement agency?

25. Have you ever been a witness or a complainant in any federal or state prosecution?

26. Are you, or is any member of your family, now under subpoena or, to your knowledge, about to be subpoenaed in any criminal case?

27. Have you, or has any member of your family, any associate, or any close friend, ever been charged with a crime?

[As to any juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each crime.]

28. Have you, or have any of your relatives, associates, or close friends ever been the subject of any investigation or accusation by any federal or state grand jury, or by any congressional committee? [As to any juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances.]

29. Have you, or have any of your close friends or relatives, ever been a victim of a crime? [As to any juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each crime.]

Other Questions

30. Do any of you have problems with your hearing or vision that would prevent you from giving full attention to all of the evidence at this trial?

31. Are any of you taking any medication that would prevent you from giving full attention to all of the evidence at this trial?

32. Do any of you have any difficulty in reading or understanding English in any degree?

Views on Witnesses and Evidence

33. The witnesses in this case may include, among others, special agents of ICE and officers with the NYPD. Would any of you be more likely to believe or disbelieve a witness merely because he or she is a law enforcement officer? Would any of you be less likely to believe or disbelieve a witness merely because he or she is a law enforcement officer?

34. During this trial, you will hear evidence regarding computers and the Internet. Do any of you have any particular experience or knowledge of computers or the Internet that might affect your ability to be fair and impartial in this case? Have any of you had any experience involving computers or the Internet that might prevent you from being fair and impartial in a case in which the defendant is charged with downloading images of child pornography onto a computer?

Function of the Court and Jury

33. The function of the jury is to decide questions of fact. You are the sole judge of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finder. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not the defendant is guilty, as charged in the indictment. Do any of you have any bias or prejudice that might prevent or hinder you from accepting the instructions of law that I will give you in this case?

34. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether the defendant is guilty?

35. Will each of you accept the proposition that sympathy must not enter into the deliberations of the jurors as to the guilt or innocence of the defendant, and that only the evidence produced here in Court may be used by you to determine the guilt or innocence of the defendant?

36. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Do any of you

feel that, even if the evidence established the defendant's guilt beyond a reasonable doubt, you might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

37. Do any of you have any religious, philosophical, or other belief that would make you unable to render a guilty verdict for reasons unrelated to the law or evidence?

38. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, do any of you have the slightest doubt in your mind, for any reason whatsoever, that you will be able to serve conscientiously, fairly, and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained to you?

Juror's Background

39. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's family status;
- b. the juror's occupation and educational background;
- c. the name and general location of the juror's employer;
- d. the nature of the juror's work;
- e. the period of employment with that employer;
- f. the same information concerning other employment within the last five years;

- g. the same information with respect to the juror's spouse and any working children;
- h. the area in which the juror lives;
- i. the juror's and juror's spouses hobbies;
- j. what newspapers and magazines the juror reads, and how often; and
- k. what television programs the juror regularly watches.

Requested Instruction
Following Impaneling of the Jury

40. From this point until the time you retire to deliberate, it is your duty not to discuss this case, and not to remain in the presence of other people who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family, and with your friends. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk.

41. In this regard, let me explain to you that the attorneys and the defendant in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

42. In this connection, I instruct you that, when the Court is in recess, you should stay either in the jury room or somewhere outside the courtroom. Please do not wait in the courtroom.

Dated: New York, New York
August 4, 2008

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney

By: /s/
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Assistant United States Attorney
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